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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

DOUGLAS VELASQUEZ,	
Plaintiff and Appellant,	G028279
v.	(Super. Ct. No. 810188)
CITY OF SANTA ANA et al.,	O P I N I O N
Defendants and Respondents.	

Appeal from a judgment of the Orange County Superior Court, Thierry P. Colaw, Judge. Affirmed.

John F. Edwards for Plaintiff and Appellant.

Joseph W. Fletcher, City Attorney, and Michelle Garmong, Deputy City Attorney, for Defendants and Respondents.

* * *

THE COURT:[*]

In the hope of fostering efficiency and zeal in the public workforce and ensuring that public employees and entities function fluidly and effectively—rather than timorously and in fear of legal reprisals—California adheres to a policy of immunizing public entities and employees against liability for damages stemming from acts undertaken by them within the scope of their authority or employment. Appellant's lawsuit—a tort action to recover damages he claims were sustained when he was forced to scuttle his plans to open a restaurant and dance hall because he was denied an occupancy permit after having refused to pay a bribe allegedly solicited by a defendant city employee—collides head-on with that policy. Nevertheless, appellant contends the trial court erred in sustaining defendants' demurrers because it failed to construe his pleadings liberally, deprived him of his constitutional right to pursue his occupation, and because the city employee, whose actions purportedly were not within the scope of his employment, was not entitled to immunity. We affirm.

I

Douglas Velasquez aspired to establish and operate a restaurant and dance hall in a building located in Santa Ana. To that end, he applied to the city for an occupancy inspection in November 1997. On December 4, 1997, that application received initial approval by defendant Bob St. Paul, an employee in the city's Building and Planning Division, whereupon appellant began expending monies to lease the property, make necessary improvements to it, acquire the appropriate licenses and permits, and so on. Velasquez alleges that at some point during that process St. Paul requested that he bestow on him a monetary "gift," to be delivered to St. Paul's home so as to avoid detection of the illegal practice. Velasquez alleges he refused to pay the solicited bribe and, as a result, on or about April 21, 1998, St. Paul partially rescinded his

[*] Before Bedsworth, Acting P. J., Moore, J., and Aronson, J.

earlier approval, declaring now that the premises were approved for use as a restaurant only (and not as a dance hall). Not content with half a loaf under these circumstances, Velasquez abandoned his development plans and instead filed a claim concerning the incident with the City of Santa Ana on October 19, 1988, which the city rejected in December, 1988. Meanwhile, following the partial withdrawal of approval, Velasquez stopped making lease payments to the property owner, who promptly sued him for breach of their lease agreement.

Undaunted, Velasquez pressed on. On June 6, 1999, he filed a pro per complaint in superior court alleging a potpourri of tort claims premised on either of two factual scenarios. First, Velasquez alleged he sustained both economic and emotional distress damages when St. Paul partially withdrew approval of his occupancy application because he declined St. Paul's invitation to provide him with a "gift." Second, appellant averred St. Paul knew, but wrongfully failed to disclose, that on at least one recent previous occasion the city had denied building and/or occupancy permits to another would-be restaurateur bent on establishing and operating an eatery in the same premises, a fact that allegedly would have dissuaded Velasquez from heading down that same dead-end street had it been disclosed to him in a timely manner. (In subsequent complaints, Velasquez alleged the defendants failed to disclose that the city had recently denied similar permit requests for the same premises *twice*, and not just once.) In either case, Velasquez alleged that, because of his employment, St. Paul was the agent of the city "and each and all of the things herein alleged to have been done by him were done in the capacity of and as agent for Defendant, City of Santa Ana."

After answering the complaint, defendants moved for judgment on the pleadings. Defendants argued, among other things, they were generally entitled to immunity from liability stemming from discretionary acts committed within the scope of employment under Government Code section 815, and specifically from Velasquez's permit-denial claims under the provisions of Government Code sections 818.4 and 821.2,

as well as from appellant's misrepresentation/nondisclosure claims under Government Code sections 818.8 and 822.2. The court granted the motion and gave appellant thirty days leave to amend.

Amend Velasquez did, but only after retaining an attorney to improve his chances. Like his original complaint, appellant's first amended complaint seeks to predicate liability on two alternate factual theories—that is, for permit denial and/or for nondisclosure of previous permit denials—and it again consistently alleges St. Paul acted within the scope of his employment at all relevant times. Moreover, apparently in the hope of overcoming defendants' claims of immunity for *discretionary* actions, Velasquez added, among other things, allegations "Defendant St. Paul has a duty to abstain from injuring the person or property of another, or infringing upon any of his rights" under Civil Code section 1708. The court was not convinced, however, and again sustained defendants' demurrers with thirty days leave to amend.

Appellant's third bite at the apple made what were, for present purposes, essentially cosmetic alterations to its predecessor complaint. That is, it continued to erect causes of action premised on the twin theories of wrongful permit denial and/or nondisclosure of previous permit denials. Likewise, it reprised verbatim the previous allegations that St. Paul was an agent/employee of the city whose complained-of actions were committed in the scope of his employment, a general allegation that is incorporated by reference by—and thereby realleged within—each of appellant's six causes of action. This complaint met the same fate as its predecessors; without granting a hearing, the court sustained defendants' demurrers; only this time it did so without granting leave to amend.

II

As a general rule in California, public entities and their employees are protected by sovereign immunity from liability for damages allegedly arising out of discretionary activities undertaken by them within the scope of their authority or

employment, except where such liability has been expressly assumed by statute. (*Davis v. City of Pasadena* (1996) 42 Cal.App.4th 701, 703.) In policy terms, sovereign immunity is intended, in part, to promote the efficiency and effectiveness of public employees and the entities for which they work. That is, as explained in *O'Hagan v. Board of Stoning Adjustment* (1974) 38 Cal.App.3d 722, 730, "[t]he legislative intent underlying these immunities is well articulated in the comments of the California Law Revision Commission, which state the rationale behind these rules as follows: 'Public entities and public employees should not be liable . . . for negligent or wrongful issuance or revocation of licenses and permits. The government has undertaken these activities to insure public health and safety. To provide the utmost public protection, government entities should not be dissuaded from engaging in such activities by the fear that liability may be imposed if any employee performs his duties inadequately.'" Velasquez attempts to circumvent the impediment of sovereign immunity by arguing not that St. Paul had a mandatory duty under the circumstances to issue an occupancy permit (rendering its issuance merely ministerial rather than discretionary), but instead by asserting that his actions were somehow not within the scope of his employment.

That assertion is specious for at least two reasons. First, all three of appellant's complaints allege, in terms that are identical in all material respects, that at all relevant times St. Paul "was authorized and empowered by Defendant, City of Santa Ana, to act and did act as the agent of Defendant, City of Santa Ana, and each and all of the things herein alleged to have been done by him were done in the capacity of and as agent for Defendant, City of Santa Ana." That general allegation, in all of the complaints, is then incorporated by reference and realleged in each of appellant's respective causes of action. In view of the fact that in testing the adequacy of plaintiff's pleadings on a demurrer we are confined to the four corners of the complaint and must take as true all of the complaint's well-pleaded, material allegations (*Thorburn v. Department of Corrections* (1998) 66 Cal.App.4th 1284, 1287-1288), we conclude that appellant's

suggestion St. Paul's withdrawal of approval of appellant's occupancy permit was outside the scope of his employment is not borne out by—and, indeed, is flatly inconsistent with—the complaint and is, therefore, meritless.

Second, and in any event, we are at a loss to understand how the revocation of an occupancy permit could be outside the ambit of express or implied authority of a building inspector. That St. Paul allegedly withdrew approval of appellant's occupancy permit because Velasquez refused to pay an alleged bribe does not perforce remove the permit revocation from the scope of St. Paul's employment. California has long since abandoned the rule that if the motive for an employee's action is purely personal, then that action must not be within the scope of employment. (See *Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, 621.) Instead, either intentional wrongdoing or negligence may be within the scope of employment. (*Ibid.*) Accordingly, the rule is that "unless an immunity otherwise provides, the governmental tort immunities apply to intentional tortious conduct." (*Gates v. Superior Court* (1995) 32 Cal.App.4th 481, 510.) This is not to say, as Velasquez suggests, that government employees are not responsible for their criminal conduct or that private citizens are helpless in the face of a rapacious public servant. A criminal prosecution by the district attorney and/or an administrative mandamus action by a private citizen would go a long way toward rectifying any such problem. (See *Burns v. City Council* (1973) 31 Cal.App.3d 999, 1005.)

Velasquez's remaining assertions are also without merit. He contends the trial court erred by failing to construe his pleadings liberally. That assignment of error is well nigh impossible to address due in no small part to appellant's failure to designate the reporter's transcript of any of the hearings on respondents' demurrers. Moreover, the clerk's transcript includes no statement of decision or minute order elucidating the court's reasoning. To make matters worse, appellant fails to pinpoint a single allegation and suggest how or why it could have been construed differently. Suffice it to say that no

amount of liberal construction could negate appellant's repeated and unequivocal allegation that St. Paul's actions were within the scope of his employment.

Finally, Velasquez declares St. Paul's revocation of his occupancy permit violated his constitutional right to engage in his chosen occupation. There is no fundamental right to engage in any particular occupation. (*Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 187, fn.7.) Moreover, there is little question but that ". . . zoning ordinances, when reasonable in object and not arbitrary in operation, constitute a justifiable exercise of the police power." (*Ensign Bickford Realty Corp. v. City Council* (1977) 68 Cal.App.3d 467 473-474.) And "[e]very intendment is in favor of the validity of the exercise of the police power" so that "the ordinance will be upheld so long as it bears substantial relation to the public health, safety, morals or general welfare." (*Id.* at p. 474.) Velasquez does not seriously challenge the overall validity of the zoning and building ordinances at issue. And, since he held no constitutional right to become a restaurateur at this particular location and was not barred from pursuing his calling at some other location, we perceive no constitutional infirmity.

The judgment is affirmed. Respondents shall recover their costs on appeal.